

OCT 25 2013

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

JULIA C. DODDLEY, CLERK  
BY: *S. D. Taylor*  
DEPUTY CLERK

UNITED STATES OF AMERICA ) Criminal Case No. 5:06cr00054-1  
)  
v. )  
) MEMORANDUM OPINION  
)  
JUAN EVANGELISTA CASTRO ) By: Samuel G. Wilson  
) United States District Judge

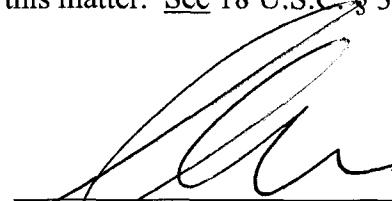
Juan Evangelista Castro, a federal inmate proceeding *pro se*, filed a "letter motion" (ECF No. 218), in which he argues that his sentence is unlawful in light of Miller v. United States, No. 13-6254, 2013 U.S. App. LEXIS 17494 (4th Cir. 2013) and United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). Castro also requests that the court appoint counsel to assist him. Inasmuch as Castro is challenging the validity of his federal sentence, the court construes Castro's motion as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Upon review of the record, however, the court finds that the motion must be dismissed as an unauthorized, successive § 2255 motion.

Castro challenges his 324-month sentence for conspiring to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 846, and possessing with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). Court records indicate that Castro previously filed a § 2255 motion regarding the same conviction and sentence which the court dismissed on its merits. See ECF Nos. 172, 182, and 183. This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). As Castro has not submitted any evidence of having obtained certification from

the Court of Appeals to file a second or successive § 2255 motion, the court must dismiss his motion as successive.<sup>1</sup>

For the reasons stated, the court construes Castro's motion as a § 2255 motion and dismisses it as successive. Further, the court finds that it is not in "the interests of justice" at this time to appoint counsel to assist Castro in pursuing this matter. See 18 U.S.C. § 3006A.

ENTER: This 24<sup>th</sup> day of October, 2013.



United States District Judge

---

<sup>1</sup> Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.